

Web Chat Transcripts
Legal Tools for Prosecuting Sexual Violence in Institutional Settings
October 16, 2008
NIC/WCL Project on Addressing Prison Rape

LTLeader: Good afternoon everyone. Welcome to the chat on legal tools for addressing sexual violence in institutional settings. I want to start with questions that I have received on the issue of legal tools.

LTLeader: The first question is “have there been cases where a staff member is prosecuted for sexual assault despite the evidence pointing to mutual agreement between the staff member and inmate?”

LTPart10: We have had one case that fits this

LTLeader: Yes, in every state except Nevada and Delaware, state law permits criminal prosecution for staff abuse of an inmate regardless of consent. Several states specifically provide that consent is not a defense.

LTPart19: Here that is considered a special type of sexual assault called Carnal knowledge of an inmate.

LTPart6: We have prosecuted many cases where there is no forcible compulsion.

LTLeader: Exactly. There are specific state statutes that address this situation and in most states that is really not an issue.

LTPart19: Due to the special nature of the relationship between inmate and officer the inmate's consent is not an issue

LTLeader: I think that is definitely the prevailing norm. Sometimes, there may be other issues that prevent the case from being prosecuted

LTPart17: According to Delaware law, there is no such thing as consent

LTLeader: I also want to note that the other state that had laws similar to Delaware and Nevada is Arizona; they felt their law was unworkable and inmates would not report for fear of being prosecuted.

LTPart6: I was surprised to see statutes wherein inmates were prosecuted at the same time. It is almost a contradiction when, at the same time, you say that the relationship makes them incapable of consent.

LTLeader: Yes. In Delaware there is no consent, but I think that the way that the law is interpreted in that inmates can't consent and staff can't consent and it results in inmates being prosecuted which is a non-starter if you want inmate reports.

LTPart19: It really depends on what each state law says.

LTLeader: So, do we want to continue to discuss this more? We can or move to another question?

LTPart19: The statues should all be similar that specifically state that sexual contact with an inmate by an officer is always illegal even with the consent of the inmate.

LTPart2: Laws of course should include more than officer as stated above

LTLeader: Next question, "Will the enactment of PREA mean that there will have to be changes in state laws?"

LTPart10: YES

LTLeader: What do you think? I have an answer but what are you thinking

LTLeader: In what way? What are you looking at changing already?

LTPart10: Depending on the requirements again YES...Especially on the reporting end

LTPart19: Absolutely and some of that could be counterproductive. Some of the reporting guidelines suggested by PREA would violate our confidentiality laws designed to protect the victim.

LTPart17: We don't expect changes to our law

LTPart13: I am not sure for our law

LTPart8: It will depend on what each state law states, some are very thorough others need improvement

LTPart13: We have talked about the very thing LTPart19 states

LTPart19: We need to be very careful here because the needs of the victim should be paramount.

LTLeader: Let's start with the discussion of how PREA standards would affect reporting and might violate state confidentiality laws.

LTPart2: The good news is people will be urged to re evaluate the current state laws

LTPart8: Good as the in current form it will be mission impossible for us

LTPart8: What should we have in place as a minimum until the review process is done and what are the best models for these?

LTPart19: Well PREA required reporting to other correctional institutions when my institution discovers the inmate was the victim of a sexual assault in the other institute. This reporting is for administrative not criminal purposes and that would violate the victim inmate's rights to privacy.

LTLeader: As to whether changes are necessary, much of what will be in standards in already in state law, but those laws are often not used by states because they are not award of them

LTPart10: The reporting headaches will depend on what occurrences are reportable. Basically how much and what kind of contact will constitute a PREA reportable

LTPart6: How can a law conflict with a standard?

LTPart19: Laws should never contradict a standard but depending on the state some of the PREA standards do cause a conflict with state law.

LTPart8: We also have the other side of this and that is the inmate on staff not only sexual but the harassment aspect. I also agree the standards as currently written are in conflict with each other and existing laws

LTLeader: On the reporting to other institutions, don't you have confidentiality waivers in place where the safety of the institution is implicated anyway. As for the victim's privacy, I believe that the standards require that you give informed consent to the inmate that you will have to report.

LTPart6: We have a special exemption in our mandatory reporting statute for domestic violence victims only.

LTPart19: I believe that the sexual harassment standards are not a good idea. It appears that PREA is attempting to define the relationship between inmate and officer as the same as employer and employee. I feel that is an unnecessary expansion of what is essentially an EEO issue

LTLeader: I think there is a lot of anxiety out there about the standards. However, having a bit of knowledge about the standards, they really do embody most of what is best practice already.

LTPart17: You are identifying a Federalist issue; whether a federal statute can dictate how a state should exercise its' police powers

LTPart19: Regarding confidentiality waivers here no one can be required to waive any right established by law.

LTLeader: Sexual harassment is not only an employment issue. It is an issue that relates to

appropriate boundaries between staff and inmates -- name calling of a sexual nature is corrosive for the environment and is already is or should be prohibited by agency policies.

LTLeader: I also want to go back to a great question -- what should I be doing now?

LTPart8: Yes there is an it is because we are trying to address the law but the standards are creating conflict and extreme difficulty in meeting them as an example the female supervision, we struggle just to get people hired.

LTPart8: Yes what is it that we must do now?

LTLeader: I would look at state laws in the areas that I have identified in the PowerPoint and determine where you are on them and how they relate to this issue.

LTPart10: I see the female to female supervision issue being the biggest issue facing smaller facilities

LTPart13: I think too, trying to create standards that are universal across the country is proving to be difficult.

LTLeader: The issue is not one solely related to female supervision. It also relates to male supervision. The standard provides that you should not watch people while they are naked or toileting if you are a staff of the opposite gender. You can meet that requirement by appropriate physical barriers and the like and staffing.

LTPart8: We vary in size and resources and currently the standards do not consider that.

LTPart19: LTPart13 hi the nail on the head. PREA is establishing federal dominance over what was essentially a state function. The individual states need to decide what, if any, of the PREA standards they are willing to adopt.

LTPart10: Standards being laid out for everyone to follow will be one thing--everyone being capable of implementing those standards will be another-- especially for small jail facilities such as the ones we have here in Kentucky

LTLeader: And I think that the standards address that. I want to note that this is not a conversation about standards -- it really is about state laws and the impact of them on this issue. Does anyone want to get back to that or do you want to continue to discuss standards.

LTPart13: Small jails yes, and think about the large jails--20,000 inmates, 7 different facilities with 7 different Captains

LTPart19: LTPart13 how big a facility do you run?

LTLeader: I am moving to a discussion of mandatory reporting laws

LTPart2: I would love to hear more about state laws and any concerns or challenges - as they impact sexual abuse in custodial settings

LTPart13: Responsible for the implementation at the seven facilities housing 20,000, including one ICE facility,

LTPart10: My understanding is in 2010 the standards will be released and those states not complying will not be receiving funding basically. Am I correct? If so, everyone will be faced with "changing" state laws to comply.

LTLeader: How many of you report abuse that occurs to the mentally ill, mentally retarded or aged prisoners

LTPart10: If it is of a sexual nature we do.

LTPart19: I do all the time. But such allegations are rare. Any allegations of abuse are reported to another agency for criminal investigation first and then we do a follow up administrative investigation.

LTPart6: Our statute is based on the status of the reporter, not the victim (only medical personnel are mandatory reporters)

LTPart13: PREA has funding behind it? Report abuse to who? We take reports on abuse that occurs universally

LTPart8: We do but it is usually something that occurred on the outside and not in jail.

LTLeader: LTPart 10 -- the standards as currently written do not require changes in law. They require changes in policies and procedures. There may be the incidental effect on laws -- perhaps with regard to confidentiality -- still unclear, but is primarily policy and practice.

LTPart17: We report abuse for all adult inmates

LTLeader: In many states correctional staff are also mandatory reporter of abuse to vulnerable persons or adults

LTPart19: We report abuse for all for both a criminal and then an administrative investigation.

LTLeader: Excellent responses all. I flag it because of recent litigation in New York and Michigan

LTPart6: Non medical correctional staff are not mandatory reporters here

LTPart10: PREA brings about no increased funding. Only a decrease in the tax money you are receiving now if you do not comply that is my understanding.

LTPart2: Do staff have training on reporting in regards to these populations and the laws impacting reporting?

LTPart19: LTPart10 has a good point. I believe that PREA is potentially in violation of the Unfunded Mandates Act

LTLeader: Actually PREA devoted some 40 million dollars to states to begin to address this issue. Did any of you receive these grants? What did you do with the \$ if you received any?

LTPart10: We did receive some of the grant money. We bought laptop computers and distributed them out to all facilities that were lacking in computer accessibility. Some of the money went toward training. At the present time all of our facilities are on a "volunteer basis" for reporting until 2010.

LTPart17: We plan on using the grant money for staff training, environmental assessments, victim medical and mental health services and investigations

LTPart8: I have an issue with this I had to make my request through the State DOC grant and was able to get \$10,000 for some cameras, we needed ten times that amount to deal with our needs

LTLeader: A number of states received substantial funding to begin to improve practices and resources to address sexual violence in custody. I believe that BJA has a list of the grantees available. It might help to see what others are doing and to borrow some of their learning.

LTPart19: I estimate, and this is very rough, that it could cost me about 7 million dollars to meet all the PREA standards. That does not include that I may have to close one older part of my facility because I will not be able to bring it up to PREA standards. So you can see that that 40 million would go fast. With that in mind I would use it for additional cameras, including sound monitoring at all part of my facility. Increased training to staff and increasing training to my medical staff.

LTPart10: We received over \$100,000 I think. This money was overseen by the DOC.

LTPart8: I would like to receive that info, we needed additional funds to address our needs, since local dollars are limited

LTPart13: Sounds like a lot of funding went to DOCs....I don't know that local jails were "eligible" for funding

LTPart8: Yes and they sort of forgot about jails

LTLeader: I think that your responses indicate some of the issues -- some received funding but it doesn't necessarily go where it might need to go; a lot of DOCs got funding. If you are a

unified community corrections and DOC then you got it. And definitely jails did not receive what they needed.

LTPart10: Our DOC distributed the money out to all local facilities as well as their own.

LTPart8: We are the first to deal with many of these issues

LTLeader: I will again move back to discussing state law issues as I think the state law issues with addressing sexual violence in custody predated PREA

LTLeader: A common complaint that we hear is that often other staff know of incidents, but do not report. Have you found ways to address that in state laws?

LTPart8: Has someone reviewed all the laws to determine who has it right and who needs what?

LTPart10: Our state law basically recognized officer on inmate and inmate on officer but actually failed to recognize inmate on inmate which has been the problem nation wide.

LTLeader: We have examined all of the state laws in a number of areas. It is on our website -- happy to share -- but it depends on your state. No one size fits all.

LTPart2: LTPart10 does your law cover more than officers?

LTLeader: Actually for inmate-on-inmate, current state laws on sodomy and sexual assault would cover the conduct. We have heard thought that states rarely send them out for prosecution and that often prosecutors do not take the cases

LTPart19: State laws were in existence prior to PREA but the state laws were all in response to a sexual assault. PREA is focused on response and eliminating sexual assault and this is where the problem arises. PREA attempts to establish standardized practices to prevent sexual assault

LTPart6: I noticed a big fault in our law before this chat. There is a special crime of institutional sexual assault, but when it was enacted, there was no legislation re: the statute of limitations for it. It is a felony, but it is not specifically listed with the enumerated felony statute of limitations and it is missing from the state law section for sexual offenses.

LTLeader: Another fine point here is that all conduct that relates to PREA is not criminal. There are some things that violate your existing policies. Every act is not going to be criminal, but it may be something that requires intervention with a warning or some administrative action

LTPart2: LTPart10 you said above that your law covers officer to inmate but not inmate-on-inmate. I just wondered if you cover all staff not just officers in staff sexual misconduct law. Volunteers? Contractors?

LTPart10: ALL staff members are included in our law.

LTLeader: I also want to note that one of the things that we found in our research is that for the reasons you have identified these are not registrable offenses.

LTPart8: This will all require documentation regardless of the nature and reporting of same, is this not correct?

LTPart19: Our law covers anyone who has any official contact with inmates.

LTLeader: Those laws requiring broad coverage evolved b/c of a recognition that many people other than staff had contact with offenders and often abused them sexually

LTPart10: "Official Contact" here covers not only in the institution but those on probation as well.

LTLeader: Probation and parole exclusion is a big issue in many states

LTLeader: Settings exclusion is big too -- halfway houses especially. It is also a big issue in juvenile settings that have so many kind of arrangements

LTPart19: Probation and parole should be included because of the dominate relationship they have over the parolee or probationer.

LTPart2: Anyone responsible for juvenile justice area or working on PREA with juvenile justice

LTPart10: We are in the process of prosecuting a Probation Aide for meeting a probationer at her motel room and having sexual contact. This was based on his "authoritative position.

LTLeader: Additionally what about youth in adult settings? How many of you have youth serving adult sentences? How old is youngest and where are they housed?

LTLeader: On the probation and parole front, often your policies allow you to take administrative action when state criminal laws don't

LTPart10: To my knowledge, we have no youth serving time in an adult facility.

LTPart8: Bottom line is that anyone in a position of authority or in contact with inmates providing services or programs must be included. Our juveniles are in a juvenile facility until they are 18. The DOC will get them if convicted as an adult, ages unknown.

LTPart10: Administrative processes stop once an employee resigns then all you have is criminal.

LTPart19: Here youths can be certified as adults by the court. Out of a population of

1,450 people I have 3 juveniles. The certification is usually based on the seriousness of a crime or the high amount of criminal activity that the youth had prior to him being adjudicated.

LTPart19: LTPart8 has is right, the biggest deterrent is criminal prosecution and all that that involved.

LTPart2: LTPart19 are all 3 youth boys?

LTLeader: I think some have different processes on whether resignation ends employee sanctioning. The finding is important so they don't go to your neighbors without that finding that at least raises a red flag.

LTPart19: LTPart2: Yes they are. I do have 180 females in our facility but no juvenile females at this time.

LTPart10: I think NIC should bring ALL of us out to Aurora for a 3-4 day conference and let us hash all this out

LTPart1: Just from our prospective on the regional jail level, we are appreciative of your discussion and insisting that correctional staff are held accountable. We want control of this issue and control of potential future issues.

LTPart2: I wish we had time to talk about co-gendered facilities

LTLeader: I will keep all of these topics in mind for future chats

LTLeader: Our session has come to an end however, the transcript will be up on our website this afternoon and you will be getting an email from us about evaluating the chat session.
THANK YOU